IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.350 OF 2001

IN

S.C.SUIT NO.1186 OF 1979

...

Balkrishna Appaya Shetty ...Appellant

v/s.

Hemant Harish Thakkar & ors. ...Respondents

...

Mr.M.M.Vashi with Mr.G.B.Kadia for the Appellant.

Mr.J.P.Sen with Mr.S.H.Jagatiani i/b Desai & Diwanji for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 23RD AUGUST, 2007

P.C.:

By consent of parties, the Appeal is disposed of in following terms:

(i) The judgment and order dated 30-3-2001 is set aside. The order dated 29-11-2000 passed in Suit No.1186 of 1979 is also set aside.

(ii) Suit No.1186 of 1979 is remitted back to the learned single Judge for fresh trial in accordance with law.

(iii) The Receiver of this court is appointed as Receiver on the suit premises. The Receiver shall take symbolic possession of the premises and appoint the Plaintiffs as agent of the Receiver to be in possession of the premises, where they will be permitted to carry on business of Restaurant.

(iv) The appointment of the Plaintiffs as agent of the Receiver shall be on usual terms and conditions except security and royalty. So far as royalty is

concerned, the Receiver shall, after agency agreement is entered by the Plaintiffs, take steps to determine the amount of royalty in accordance with law. The amount that is to be determined by the Receiver as royalty shall not be required to be paid at present. The Plaintiffs shall as agents of the Receiver shall file an undertaking before the learned single Judge that they will deposit the amount of royalty as may be determined by the Receiver, if so directed by the learned single Judge and on such terms and conditions as may be directed by the learned single Judge.

(v) Expenses of the Receiver shall be borne by the Plaintiffs.

(vi) Considering that the Suit is of the year 1979, the learned single Judge is requested to hear and dispose of the suit as expeditiously as possible.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)